



To: Multistate Tax Commission

**From: Wood Miller, Uniformity Committee Chair
Chris Coffman, Vice Chair**

Re: Uniformity Committee Annual Report

Date: July 27, 2015

The Uniformity Committee has met three times in person — in July 2015 in Spokane, WA; in December 2015 in Charleston, SC; and in March 2016 in Salt Lake City. Work groups established by the committee have met regularly by telephone. Those include the Compact Art. IV, Section 1 and Section 17 Work Groups, and the Compact Art. IV, Section 18 work group. The Committee also met by phone each week during from June 2016.

Projects by Status

On the Agenda for the Commission:

- Model Sales and Use Tax Nexus (Engaging in Business) Statute

Before the Executive Committee:

- Model Sales and Use Tax Notice and Reporting Statute (tabled)
- Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Section 1 and Section 17 Work Groups) – Report of the Committee on Issues Referred in May 2016

Current Uniformity Committee Projects:

- Art. IV, Section 18 Work Group
- Partnership Informational Project

Summaries of Projects

Model Sales and Use Tax Nexus (Engaging in Business) Statute - This is a separate item on the Commission's agenda.

Model Sales and Use Tax Notice and Reporting Statute (tabled) - The model would require remote sellers to notify in-state purchasers of a potential tax liability at the time of sale and make annual reports to each in-state purchaser and to the state. De minimis exceptions and penalties are provided. The Uniformity Committee approved a draft in March, 2011. Later that month, the Executive Committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of a Bylaw 7 survey. The proposal came back before the Executive Committee in December 2011, after not passing the Bylaw 7 survey, and clarifications were requested. The Uniformity Committee made those clarifications and the Executive Committee took the matter up again in May, 2012. During that meeting,

the Executive Committee voted to retain the proposal pending a decision in *Direct Marketing Ass'n v. Brohl*. The Tenth Circuit has now ruled that the Colorado statute is constitutional and that *Quill* does not apply to the information reporting requirements. *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (2016). The Direct Marketing Association has been granted an extension to file a petition for certiorari with the U.S. Supreme Court - expiring August 29, 2016.

Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Sec. 1 and Sec. 17 Work Groups) - Work on regulations to implement changes to Compact, Art. IV, Sections 1 and 17 was begun November 6, 2014. The work groups completed their work which takes the form of draft amendments to the MTC Model Allocation and Apportionment Regulations, and submitted a draft to the Uniformity Committee, which approved that draft with one minor change on December 10, 2015. The Uniformity Committee submitted the draft to the Executive Committee on December 11, 2015 for its consideration. The Executive Committee approved the draft for public hearing on January 29, 2016. On March 9, 2016, the Brian Hamer, acting as the Commission's Hearing Officer, conducted a public hearing taking both written and oral comments and also extended the period for comments after the hearing. The report and recommendations of the Hearing Officer were made to the Executive Committee for consideration at its May meeting. The Executive Committee referred issues regarding the proposed amendments back to the Uniformity Committee and asked for a report back on July 28, 2016.

Art. IV, Section 18 Work Group – The Uniformity Committee formed a work group to consider issues created by the Commission's adoption of amendments to Compact, Art. IV (both amendments to Section 18 itself and other sections) and to recommend rules or amendments to model rules to address those issues. Meetings of that work group were suspended while the Uniformity Committee considered issues referred by the Executive Committee related to proposed amendments to the model General Allocation and Apportionment Regulations. (See above.)

Partnership Informational Project – The Uniformity Committee has formed a work group to begin consideration of issues that affect the application of state taxes to partnerships and to consider the implications of new federal audit and adjustment rules. There have been informational sessions held which included the Uniformity and Audit Committees and there will likely be additional informational sessions before the work group determines the issues that may need to be taken up. States that have volunteered to participate in the work group include: Alabama, Georgia, Montana, New Hampshire, North Carolina, Oregon, Pennsylvania, Texas (and perhaps others).